

CRM-A-2265-MA-2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.225

CRM-A-2265-MA-2016 (O&M)

Date of Decision: 31.01.2020

GORDHAN

....Applicant/Appellant

VS

RAJAN AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Sameer, Advocate, for
Mr. Anhul Singh, Advocate,
for the applicant-appellant.

Mr. Vikrant Pamboo, D.A.G., Haryana.

Mr. R.B.Gupta, Advocate,
for respondent Nos.1 and 2.

ARCHANA PURI, J.

CRM-40190-2016

Heard.

There is a delay of 197 days in filing of the application for
grant of leave to appeal.

In view of the averments made in the application, the same
is allowed and the said delay is hereby condoned.

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That, initially Gordhan, son of Roopi had filed a complaint
under Section 323, 436, 427, 504, 506 and 34 of Indian Penal Code at
Police Station Sadar, Palwal, against Rajan and Sher Singh, both sons
of Hirdey. After conclusion of the trial, vide judgment dated
15.03.2015, learned trial Court held that the prosecution has failed to

prove its case beyond shadow of reasonable doubt and consequently both the accused were acquitted of the charges levelled against them.

Feeling aggrieved by the judgment of acquittal, complainant-Gordhan had preferred the present application under Section 378(4) Cr.P.C., thereby seeking special leave to appeal in the interest of justice.

The complainant-Gordhan had purchased a plot from Kishan Chand son of Revti, resident of village Mandkol, vide registered sale deed dated 04.08.2000 and raised construction of two rooms and a hut thereon. Since the date of purchase, he was residing in the said house. Hirdey, father of accused, had filed a suit for pre-emption against him, which was decreed by the Court of learned Civil Judge (Junior Division), Palwal, and Hirdey had filed an execution petition, which is still pending.

Further, it is averred that on 20.05.2007, accused No.1-Rajan and accused No.2-Sher Singh, who are sons of Hirdey, in furtherance of their common intention, came to his house and started abusing him. Rajan abused him in the name of his mother and sister and exhorted to kill him. He was announcing that they shall take possession of the land today. Upon this, accused No.2, namely, Sher Singh, had caught hold of him and gave slaps and fist blows. Accused No.1, namely, Rajan, was saying that it will cause delay, if the possession of the plot is taken through Court. He (complainant) told the accused that he will deliver possession as per the order of the Court, but both the accused started beating him. Rajan asked Sher Singh to set his hut on fire. Thereupon, Sher Singh poured kerosene

oil upon his hut, which he was carrying in a bottle and Rajan took out a match box from his pocket and set ablaze his hut and the same was reduced to ashes. His 22 maunds of wheat and other household articles had burnt in the fire and he sustained a loss of Rs.50,000/-. When complainant raised alarm, Net Ram and Ram Dutt along with some other persons had come there and saved complainant from the clutches of both the accused. While leaving the spot of occurrence, accused threatened to vacate the property, otherwise they will kill him (complainant). The complainant had filed a complaint at Police Station Sadar, Palwal, on the same day, however, the police had colluded with the accused. He also moved a complaint to Deputy Superintendent of Police and Superintendent of Police, but no action was initiated against the accused persons. On these accusations, the complainant had made a prayer to summon the accused and punish them for commission of offences punishable under Sections 436, 427, 323, 504 and 506 read with Section 34 of Indian Penal Code.

After recording of the preliminary evidence, vide order dated 01.10.2010, both the persons, who were arrayed as accused, were summoned to face trial for the commission of offences punishable under Sections 436, 323 and 506 read with Section 34 of Indian Penal Code.

In pursuance of the summoning order, the presence of both the accused was secured by the trial Court and thereupon the case was committed to the Court of Sessions vide order dated 19.02.2014.

On the basis of the material coming forth, charges were framed against both the accused under Section 323 and 436 read with

Section 34 and 506 of Indian Penal Code, to which they did not plead guilty and claimed trial.

In endeavour to establish its case, the complainant-Gordhan stepped himself into witness-box as PW-1 and Ram Dutt was examined as PW-2.

All the incriminating circumstances appearing in the evidence were put to the accused in their respective statements under Section 313 Cr.P.C., wherein they pleaded innocence. In defence, the accused examined as many as 4 witnesses, DW-1 Dr. Surender Kumar, Sanjivan Hospital, Bamni Khera, Palwal, DW-2 Rajender Sharma, Fireman, Fire Station, Palwal, DW-3 Mohar Pal and DW-4 Bhagirath. Thereafter, the defence evidence was closed.

After hearing the learned public prosecutor as well as the counsel for the accused and on perusal of the evidence brought on record, vide the impugned judgment, benefit of doubt was extended to both the accused and they were acquitted of the charges levelled against them.

Feeling aggrieved by the judgment of acquittal, present application has been filed by the complainant-Gordhan.

Perusal of the record reveals that complainant-Gordhan while stepping into the witness-box as PW-1 has deposed in consonance with the recitals of the complaint. He has also proved the application filed before S.H.O., Police Station Sadar, which is Ex.P-1 and when no action was taken he filed the application Ex.P-2. He also identified the accused in the Court. Another witness examined by the complainant is PW-2 Ram Dutt, who along with Net Ram at the

relevant time of causing of the occurrence, in pursuance of hearing a noise of scuffle, had allegedly reached the spot and he also deposed about having seen Rajan and Sher Singh, giving beating to Gordhan. He also noticed a bottle of kerosene oil in the hand of Sher Singh, who poured the same on the hut and lit the fire. Again he said that Rajan had lit the fire. They also threatened to kill Gordhan. Besides the oral evidence so coming forth, no other evidence of any kind has been led. Even though the photographs of the spot of occurrence were allegedly taken by the photographer, but however, his name as such has neither been disclosed by the complainant, nor these photographs have been proved.

There is a denial of the prosecution version by the accused in the statement under Section 313 Cr.P.C. At this juncture, it is also pertinent to mention that as many as 4 witnesses have been examined by the accused. DW-1 Dr. Surender Kumar, Sanjivan Hospital, Bamni Khera, Palwal, who had deposed about the admission of Sher Singh in his hospital on 20.05.2007 and he had also proved the OPD slip as Ex.D-1. Besides the same, another material witness of the defence is DW-2, Rajender Sharma, Fireman, who has stated about himself to be serving as Fireman since 1989 and also deposed that as per the record of the department, they had not received any intimation of fire incident at village Mandkol on 20.05.2007. He also deposed that in front of his house there is a cattle yard of Gordhan, which is owned by Sher Singh. He also deposed that on 4:00/5:00 p.m. on that day, he noticed smoke around the cattle yard. Gordhan and Net Ram had apprised him that they are cleaning the hey by way of burning.

Likewise, even DW-4, Bhagirath, had deposed that on 20.05.2007, at about 5:30 p.m., while he was going to the field from his home, on the way he had spotted Gordhan son of Roopi and Net Ram son of Tek Chand in their plots and they had apprised him that they are cleaning their plot by burning the grass, paddy straw and other waste.

Thus, considering the kind of evidence so brought on record by the complainant side and also not proving any kind of call, so made to the fire station, or by way of examination of any other witness from the vicinity of the spot of occurrence, it is further pertinent to mention that complainant has though proved on record the copy of complaint Ex.P-1, which is claimed to have been made to the police on 21.05.2007, but, it is categoric observation made by the trial Court that even no stamp of receipt of the complaint is in the Police Station. Even, no police official has been summoned by the complainant to prove about the receipt of any such complaint in the Police Station on the next day of the occurrence. Had it so been made, then definitely there ought to be some kind of endorsement made on the application itself, vis-a-vis the receipt of the complaint by the police officials or the same could have been proved by way of summoning record of the concerned Police Station. This submission on the part of the prosecution and also considering the oral evidence so brought on record and the amiss given to the fire station authorities as well as photographs not having been proved, do belie the version of the prosecution. In fact, the defence version, so putforth by way of examination of various witnesses, seems to be more probable. Even, motive as such is spelt out for false implication of the accused as the

complainant has lost battle in Civil Court.

Considering all the aforesaid circumstances, definitely, the version, so putforth by the complainant vis-a-vis the role of the accused do carry an element of doubt and precisely on this account, the learned trial Court has extended benefit of doubt to the accused and acquitted them of the charges levelled against them. Considering the same, we do not find any merit in the application seeking leave to file appeal. Therefore, the leave sought for is declined.

Accordingly, the application stands dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

31.01.2020
Himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No